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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

FRED JEAN, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

STEC, INC., MANOUCH MOSHAYEDI,  
and MARK MOSHAYEDI,

Defendants.

Case No. SACV09-01304 JVS  
(MLGx)

CLASS ACTION

THE HESTER FAMILY'S NOTICE  
OF MOTION AND MOTION FOR  
CONSOLIDATION,  
APPOINTMENT OF LEAD  
PLAINTIFF AND APPROVAL OF  
LEAD COUNSEL SELECTION;  
MEMORANDUM OF POINTS  
AND AUTHORITIES IN  
SUPPORT THEREOF

DATE: February 8, 2010  
TIME: 1:30 p.m.  
CTRM: 10C  
JUDGE: HON. JAMES V. SELNA

[Caption continued on next page]

1 HADI SAKHAI, Individually and on  
2 Behalf of All Others Similarly Situated,

3 Plaintiff,

4 vs.

5 STEC, INC., MANOUCH MOSHAYEDI,  
6 MARK MOSHAYEDI, RAYMOND D.  
7 COOK, J.P. MORGAN SECURITIES  
8 INC., DEUTSCHE BANK SECURITIES  
9 INC., BARCLAYS CAPITAL INC. and  
10 OPPENHEIMER & CO. INC.,

11 Defendants.

Case No. SACV09-01306 JVS  
(MLGx)

12 FRED GREENWALD, Individually and on  
13 Behalf of All Others Similarly Situated,

14 Plaintiff,

15 vs.

16 STEC, INC., MANOUCH MOSHAYEDI  
17 and MARK (MERHDAD) MOSHAYEDI,

18 Defendants.

Case No. SACV09-1315 JVS  
(MLGx)

19 DANIEL MUNTER, Individually and on  
20 Behalf of All Others Similarly Situated,

21 Plaintiff,

22 vs.

23 STEC, INC., MANOUCH MOSHAYEDI,  
24 MARK MOSHAYEDI and RAYMOND D.  
25 COOK,

26 Defendants.

Case No. SACV09-1320 JVS  
(MLGx)

1 JONATHAN FISCHER, Individually and  
2 on Behalf of All Others Similarly Situated,

3 Plaintiff,

4 vs.

5 STEC, INC., MANOUCH MOSHAYEDI,  
6 MARK MOSHAYEDI and RAYMOND D.  
COOK,

7 Defendants.

} Case No. SACV09-8536 JVS  
(MLGx)

8 MARCEL WEINBERGER, Individually  
9 and on Behalf of All Others Similarly  
Situating,

10 Plaintiff,

11 vs.

12 STEC, INC., MANOUCH MOSHAYEDI,  
13 MARK MOSHAYEDI and RAYMOND D.  
COOK,

14 Defendants.

} Case No. SACV09-1460 JVS  
(MLGx)

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**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 8, 2010, at 1:30 p.m., or as soon as this matter may be heard in Courtroom 10C of the Honorable James V. Selna, in the United States District Court for the Central District of California, Ronald Reagan Federal Building and U.S. Courthouse, 411 West Fourth Street, Santa Ana, CA 92701-4516, Cebron W. Hester, Judy W. Hester and Justin Black (collectively the “Hester Family” or “Movant”), will, and hereby does, move for an order: (1) consolidating any related actions filed in or transferred to this District for all purposes pursuant to Fed. R. Civ. P. 42(a); (2) appointing Movant as Lead Plaintiff pursuant to the PSLRA; (3) approving Movant’s selection of Milberg LLP (“Milberg”) as lead counsel in this action and in any subsequently filed and/or related cases; and (4) granting such other and further relief as the Court may deem just and proper.

This motion is based on the attached Memorandum of Points and Authorities, the Declaration of Jeff S. Westerman in support thereof, all pleadings, records and files in this action, any evidence presented at or before the hearing, including any written or oral argument as may be presented to the Court, and all other matters of which the Court may take judicial notice.



# MEMORANDUM OF POINTS AND AUTHORITIES

## PRELIMINARY STATEMENT

Cebon W. Hester, Judy W. Hester and Justin Black (the “Hester Family” or “Movant”), respectfully submit this Memorandum of Law in support of its motion, pursuant to Section 21D of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78u-4(a)(3)(B), as amended by the Private Securities Litigation Reform Act of 1995 (“PSLRA”), for an order: (1) consolidating the above-captioned actions pursuant to Fed. R. Civ. P. 42; (2) appointing the Hester Family as Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B); (3) approving Movant’s selection of Milberg LLP (“Milberg”) as Lead Counsel in this action and in any subsequently filed and/or related cases; and (4) granting such other and further relief as the Court may deem just and proper. The Hester Family is comprised of Cebon and Judy Hester, who are husband and wife, and Justin Black, their adult grandson.

The Actions should be consolidated because they each involve substantially similar issues of law and fact. *See* Fed. R. Civ. P. 42(a). Next, pursuant to the PSLRA, the Court should appoint as lead plaintiff the movant with the largest financial interest in the relief sought by the class that also meets the adequacy and typicality prongs of Fed. R. Civ. P. 23. *See In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002); *Ferrari v. Gisch*, 225 F.R.D. 599, 602 (C.D. Cal. 2004). The Hester Family expended over \$600,000 to acquire the shares of corporate defendant STEC and incurred losses of approximately \$353,991 due to defendants’ conduct. Movant believes that it has the largest financial interest of any other movant, is typical, and will more than adequately represent the interests of the Class.<sup>1</sup> The Hester Family’s

<sup>1</sup> Local Rule 7-3 requires a conference of counsel prior to filing motions. Movant’s counsel has contacted some of the law firms that filed actions in this matter. However, Movant cannot know which Class members intend to move for appointment as lead plaintiff, because the PSLRA allows non-party class members to file motions. In addition, Movant submits that Local Rule 7-3 may be inapplicable to motions for selection of lead plaintiff and approval of its selection of lead counsel because such motions and the timing of such motions are mandated by federal statute.

1 selection of Milberg as Lead Counsel should be approved by the Court because  
 2 Milberg has extensive experience in spearheading securities class actions, including  
 3 many within this District, and will adequately represent the Class.

#### 4 **PROCEDURAL BACKGROUND**

5 The above-captioned actions (“Actions”) are brought pursuant to §§ 10(b) and  
 6 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§  
 7 78j(b) and 78t(a), and Securities Exchange Commission (“SEC”) Rule 10b-5, 17  
 8 C.F.R. § 240.10b-5. Defendants include STEC and certain of its officers and  
 9 directors.<sup>2</sup> One Action, the *Sakhai* action, is additionally brought pursuant to §§ 11,  
 10 12(a)(2) and 15 of the Securities Act of 1933 (the “Securities Act”), 15 U.S.C. §§ 77k  
 11 and 77o, and Defendants in the Action include underwriters.<sup>3</sup> The first-filed action,  
 12 the *Jean* action, was filed on November 6, 2009.

#### 13 **FACTUAL BACKGROUND**<sup>4</sup>

14 STEC is a Santa Ana, California-based leading global provider of solid-state  
 15 technologies and solutions tailored to meet the high-performance, high-reliability  
 16 needs of original equipment manufacturers (“OEMs”). STEC designs, develops,  
 17 manufactures and markets custom memory solutions based on flash memory and  
 18 dynamic random access memory (“DRAM”) technologies. The Company makes  
 19 solid-state drives (“SSDs”) that store data using flash memory chips instead of  
 20

21 The PSLRA sets forth the procedure that must be followed for the selection of lead  
 22 plaintiff and lead counsel, and mandates a deadline of January 5, 2010. *See infra* at 8.

23 <sup>2</sup> Individual defendants to this action include Manouch Moshayedi (“CEO” or  
 24 “Defendant”), the Company’s Chief Executive Officer and Chairman of the Board,  
 25 Mark Moshayedi (“COO” or “Defendant”), the Company’s Chief Operating Officer,  
 President, Chief Technical Officer, and a director of the company, and Raymond D.  
 Cook (“Cook” or “Defendant”), the Company’s Chief Financial Officer.

26 <sup>3</sup> The underwriter defendants named in this related action are J.P. Morgan Securities,  
 27 Inc., Deutsche Bank Securities Inc., Barclays Capital Inc., and Oppenheimer & Co.,  
 Inc.

28 <sup>4</sup> The factual summary is taken from allegations common to all of the actions.

1 spinning disks. The drives, known as solid state because they have no moving parts,  
2 are found in servers used by companies, banks, governments and others.

3 Throughout the Class Period, defendants represented that STEC was effectively  
4 growing its business and that the growth would continue.<sup>5</sup> Such statements presented  
5 the Company's historical results, its customers, its competitive position and its  
6 prospects, in a very favorable light, causing the Company's stock to trade at inflated  
7 levels. Such statements were materially false and misleading because, contrary to the  
8 picture painted by defendants and assurances to investors that STEC had no  
9 competition at that stage, the Company was facing looming threats of competition  
10 from other high-technology companies. Defendants further assured investors that  
11 enterprise end-users were quickly adopting SSD devices over traditional hard disk  
12 drive ("HDD") devices. As a result of defendants' false and misleading statements,  
13 STEC stock traded at artificially inflated prices during the Class Period, reaching a  
14 high of \$41.84 per share on September 10, 2009. This inflated stock price permitted  
15 top STEC officers/directors to sell 9 million shares of their STEC stock at inflated  
16 prices in a secondary stock offering in August 2009.

17 On September 17, 2009, WedBush Morgan analyst Betsy Van Hees published  
18 an analyst report on STEC, identifying important adverse information, stating in part:

- 19 • Our industry checks indicate that one of STEC's Tier I OEM enterprise  
20 customers is in final qualification stages with Toshiba for its Single  
21 Level Cell (SLC) NAND-based serial attached SCSI (SAS) interface  
22 SSD. While we had expected STEC's competitors to gain design wins at

23 <sup>5</sup> Here, five of the related actions allege the same class period of June 16, 2009, to  
24 November 3, 2009, while one action, the *Jean* Action, alleges a shorter class period  
25 of August 3, 2009, to November 3, 2009. Typically, when faced with differing class  
26 periods, courts utilize the longest period for purposes of calculating the financial  
27 interests of the movants. *See Takeda v. Turbodyne Techs.*, 67 F. Supp. 2d 1129, 1137  
28 (C.D. Cal. 1999) (finding slightly different class periods do not preclude a finding of  
typicality because varying class periods may be harmonized). And *see, e.g., In re*  
*Century Aluminum Co. Sec. Litig.*, No. C 09-1001, 2009 U.S. Dist. LEXIS  
81205 (N.D. Cal. 2009) (utilizing the largest alleged class period when consolidating  
actions that allege different class periods).

1 its OEMs, we believed this would likely not occur until 1H:1 OE.

- 2 • Industry checks lead us to believe a leading Hard Disk Drive (HDD)
- 3 OEM is likely set to introduce a SLC SATA/SAS SSD and possibly a
- 4 Multi-Level-Cell (MLC) SSD drive in Q4.

5 In a note issued on September 17, 2009, Stifel Nicolaus analyst Aaron C.

6 Rakars also cautioned investors on the “meaningful increase in competitive noise,”

7 stating in part:

- 8 • While we do not believe this announcement changes Stec’s fundamental
- 9 picture over the next few quarters [i.e., still believe upside potential
- 10 exists to September and December quarter expectations], we believe this
- 11 does support our cautious thesis ahead of what looks to be the potential
- 12 for a meaningful increase in competitive noise over the coming quarters.

13 As a result of these reports, which contradicted defendants’ prior statements,

14 STEC’s stock collapsed \$6.37 per share to close at \$31.53 per share on September 17,

15 2009 – a one-day decline of over 16%, on unusually high volume of more than 21.2

16 million shares. STEC’s stock price continued to be inflated, however, until the

17 Company announcement on November 3, 2009.

18 After the market closed on November 3, 2009, STEC reported its third quarter

19 2009 financial results and its fourth quarter 2009 outlook, announcing an inventory

20 warning that one of its customers would carry 2009 inventory into 2010, impacting

21 the Company’s first quarter 2010. STEC identified the customer as EMC

22 Corporation (“EMC”), a company that accounts for 90% of the Company’s ZeusIOPS

23 SSD business.

24 On this news, STEC’s stock plummeted \$9.01 per share to close at \$14.14 per

25 share on November 4, 2009, a one-day decline of over 38%, on volume of more than

26 31.9 million shares. Defendants’ materially false and misleading statements during

27 the Class period resulted in Movant and other members of the Class purchasing the

28 Company’s common stock at artificially inflated prices, thus causing the damages to

1 the Class.

## 2 ARGUMENT

### 3 I. THE RELATED ACTIONS SHOULD BE CONSOLIDATED

4 Pursuant to the PSLRA, the Court should first rule on motions to consolidate  
5 before addressing the lead plaintiff/lead counsel issues. See 15 U.S.C. §78u-  
6 4(a)(3)(B)(ii). Consolidation is appropriate where there are actions involving  
7 common questions of law or fact. Fed. R. Civ. P. 42(a) ; *Yousefi v. Lockheed Martin*  
8 *Corp.*, 70 F. Supp. 2d 1061, 1064 (C.D. Cal. 1999); *In re Equity Funding Corp. of*  
9 *Am. Sec. Litig.*, 416 F. Supp. 161, 175 (C.D. Cal. 1976).

10 The six related actions pending before this Court are suited for consolidation.  
11 The class action complaints are all brought by purchasers of STEC common stock.  
12 The complaints allege near identical class periods and contain similar allegations  
13 charging Defendants with making false and misleading statements concerning the  
14 Company's financials and the adoption of its products by customers; and  
15 misrepresenting the extent to which competition would harm STEC's business. See  
16 *Jean Action* ¶¶ 19-22, *Sakhai Action* ¶¶ 34-60, *Greenwald Action* ¶¶ 33-37, *Munter*  
17 *Action* ¶¶ 25-40, *Fischer Action* ¶¶ 25-51, *Weinberger Action* ¶¶ 30-45.

18 District courts have recognized that consolidation is particularly appropriate in  
19 the context of securities class actions if the complaints are based on the same public  
20 statements and/or reports. See *Taubenfeld v. Career Educ. Corp.*, No. 03 C 8884,  
21 2004 U.S. Dist. LEXIS 4363, at \*3-4 (N.D. Ill. Mar. 19, 2004); *In re Royal Ahold*  
22 *N.V. Sec. & Erisa Litig.*, 219 F.R.D. 343, 348 (D. Md. 2003). Differences between  
23 particular defendants, damages, and/or class periods do *not* defeat the appropriateness  
24 of consolidation for federal securities cases based upon the same underlying facts.  
25 See *In re Microstrategy Inc. Sec. Litig.*, 110 F. Supp. 2d 427, 431 (E.D. Va. 2000).  
26 Therefore, although the Actions are not identical, their common factual bases,  
27 overlapping legal claims and defendants warrant their consolidation.  
28

## II. THE HESTER FAMILY SHOULD BE APPOINTED LEAD PLAINTIFF

### A. The Procedural Requirements Pursuant to the PSLRA

The PSLRA establishes a procedure that governs the appointment of a Lead Plaintiff in “each private action arising under the [Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(1) and (a)(3)(B)(i). This procedure is further detailed by the Ninth Circuit’s decision in *In re Cavanaugh*, 306 F.3d 726, 729-30 (9th Cir. 2002).

First, the plaintiff who files the initial action must publish a notice to the class, within 20 days of filing the action, informing class members of their right to file a motion for appointment as Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(i). Plaintiff in the first-filed *Jean* action caused notice to be published through *Business Wire* on November 6, 2009.<sup>6</sup> This notice indicated that applications for appointment as Lead Plaintiff were to be made no later than 60 days from the date of the press release, which would be January 5, 2010. Within 60 days after publication of the required notice, any member or members of the proposed Class may apply to the Court to be appointed as Lead Plaintiff, whether or not they have previously filed a complaint in these Actions. 15 U.S.C. § 78u-4(a)(3)(A) and (B).

Next, the PSLRA requires that within 90 days after publication of the initial notice of pendency of the action, the Court shall appoint as Lead Plaintiff the movant that the Court determines to be the most capable of adequately representing the interests of Class Members. 15 U.S.C. § 78u-4(a)(3)(B)(i). In making this determination, the statute directs the Court to the following objective criteria:

[T]he court shall adopt a presumption that the most adequate plaintiff in any

<sup>6</sup> See Westerman Decl. Ex. C. National news wire services have been recognized as suitable vehicles for meeting the statutory requirement that notice be published “in a widely circulated national business-oriented publication or wire service.” *Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 62-64 (D. Mass. 1996); *Lax v. First Merchs. Acceptance Corp.*, No. 97-C-2715, 1997 U.S. Dist. LEXIS 11866, at \*2 (N.D. Ill. Aug. 6, 1997).



1 private action arising under this title [] is the person or group of persons that --

2 (aa) has either filed the complaint or made a motion in response  
3 to a notice...;

4 (bb) in the determination of the court, has the largest financial  
5 interest in the relief sought by the class; and

6 (cc) otherwise satisfies the requirements of Rule 23 of the  
7 Federal Rules of Civil Procedure.

8 15 U.S.C. § 78u-4(a)(3)(B)(iii).

9 **B. The Hester Family Is “The Most Adequate Plaintiff”**

10 **1. The Hester Family Has Complied With the PSLRA and**  
11 **Should Be Appointed Lead Plaintiff**

12 The time period in which class members may move to be appointed Lead  
13 Plaintiff in this case, under 15 U.S.C. § 78u-4(a)(3)(A) and (B), expires on January 5,  
14 2010. Movant’s application, filed January 5, 2010, is thus timely. Movant has  
15 reviewed a complaint against STEC and is willing to serve as a representative party  
16 on behalf of the Class. *See* Westerman Decl. Ex. A (Certifications of Cebon W.  
17 Hester, Judy W. Hester and Justin Black). In addition, Movant has selected and  
18 retained competent counsel to represent it and the Class. *See* Westerman Decl. Ex. D  
19 (attaching firm résumé of Milberg).

20 Accordingly, Movant has satisfied the individual requirements of 15 U.S.C. §  
21 78u-4(a)(3)(B) and is entitled to have its application for appointment as Lead  
22 Plaintiff, and its selection of Milberg as Lead Counsel, approved by the Court.

23 **2. The Hester Family Has the Largest Financial Interest**

24 According to 15 U.S.C. § 78u-4(a)(3)(B)(iii), the Court shall appoint as Lead  
25 Plaintiff the movant or movants who have the largest financial interest in the relief  
26 sought by the action. *See Ferrari v. Gisch*, 225 F.R.D. 599, 602 (C.D. Cal. 2004)  
27 (citing *In re Cavanaugh*, 306 F.3d 726, 732 (9th Cir. 2002)).

28 Because the PSLRA does not provide a method for determining the relative

financial interests of lead plaintiff movants, courts have adopted various methodologies, the most popular one being the “four factor” methodology that looks at: (1) the number of shares purchased; (2) the number of net shares purchased; (3) the net expenditure and (4) the approximate loss. *See Richardson v. TVIA, Inc.*, No. C-06-6304, 2007 U.S. Dist. LEXIS 28406 \*11 (N.D. Cal. 2007) (citing *Lax v. First Merchs. Acceptance Corp.*, No. 97-C-2715, 1997 U.S. Dist. LEXIS 11866 (N.D. Ill. Aug. 11, 1997)).

	<b>Shares Purchased During Class Period</b>	<b>Net Class Period Shares</b>	<b>Net Value Expended During Class Period</b>	<b>Approx. Loss.<sup>7</sup></b>
<b>The Hester Family</b>	19,647	19,647	\$607,145.37	(\$353,991)

*See* Westerman Decl. Ex. B (further detailing Movant’s transactions).

As demonstrated herein, Movant has a large financial interest in this case. Movant bought 19,647 shares during the class period at a cost of \$607,145, did not sell any shares during the class period, and lost \$353,991. Therefore, Movant satisfies all of the PSLRA’s prerequisites for appointment as Lead Plaintiff in this action and should be appointed Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B). *See* Westerman Decl. Ex. B.

### **3. The Hester Family Satisfies the Requirements of Rule 23**

According to 15 U.S.C. § 78u-4(a)(3)(B), in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must also “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” *See In re Cavanaugh*, 306 F.3d. at 730. Rule 23(a) provides that a party

<sup>7</sup> The loss factor can be determined using either the First-In-First-Out methodology to offset purchases and sales or the Last-in-First-Out method. Because the Hester Family did not sell any shares during the Class Period, both methodologies yield the same result, a loss of \$353,991.



1 may serve as a class representative if the following four requirements are satisfied:

2 (1) the class is so numerous that joinder of all members is impracticable;

3 (2) there are questions of law or fact common to the class;

4 (3) the claims or defenses of the representative parties are typical of the  
5 claims or defenses of the class; and

6 (4) the representative parties will fairly and adequately protect the  
7 interests of the class.

8 Fed. R. Civ. P. 23(a).

9 Of the four prerequisites to class certification, only two – typicality and  
10 adequacy – directly address the personal characteristics of the class representative.  
11 *Sieball v. Tibco Software, Inc.*, No. 05-2146, 2006 U.S. Dist. LEXIS 26780, \*15  
12 (N.D. Cal. Feb. 24, 2006) (“In the context of determining the appropriate lead  
13 plaintiff . . . , the requirements of ‘typicality’ and adequacy of representation are the  
14 key factors.”). Consequently, in deciding a motion to serve as Lead Plaintiff, the  
15 Court should limit its inquiry to the typicality and adequacy prongs of Rule 23(a), and  
16 defer examination of the remaining requirements until the Lead Plaintiff moves for  
17 class certification. *Schrivver v. Impac Mortgage Holdings, Inc.*, No. SACV-06-31,  
18 2006 U.S. Dist. LEXIS 40607, \*16 (C.D. Cal. May 1, 2006) (“At the lead plaintiff  
19 appointment stage, the Rule 23 inquiry is not as searching as it would be on a motion  
20 for class certification; the prospective lead plaintiff need only make a prima facie  
21 showing that it meets the typicality and adequacy factors.”). As detailed below,  
22 Movant satisfies both the typicality and adequacy requirements of Rule 23, thereby  
23 justifying its appointment as Lead Plaintiff. The Hester Family has claims that are  
24 typical of those of other Class Members and it can adequately serve as Lead Plaintiff.

25 **a. The Hester Family’s Claims Are Typical of the**  
26 **Claims of All the Class Members**

27 Under Rule 23(a)(3), typicality exists where “the claims . . . of the  
28 representative parties” are “typical of the claims . . . of the class.” The typicality

1 requirement of Rule 23(a)(3) is satisfied when the representative plaintiff's claims  
 2 arise from the same event or course of conduct that gives rise to claims of other class  
 3 members, and when the claims are based on the same legal theory. *See Crossen v. CV*  
 4 *Therapeutics*, No. 03-03709, 2005 U.S. Dist. LEXIS 41396, \*13 (N.D. Cal. Aug. 9,  
 5 2005). The requirement that the proposed class representatives' claims be typical of  
 6 the claims of the class does not mean, however, that the claims must be identical. See  
 7 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998); *Pirelli Armstrong*  
 8 *Tire Corp. Med. Benefits Trust v. LaBranche & Co.*, 229 F.R.D. 395, 412 (S.D.N.Y.  
 9 2004).

10 In this case, the typicality requirement is met because the claims of the Hester  
 11 Family are identical to, and non-competing and non-conflicting with, the claims of  
 12 the other Class members. Movant satisfies the typicality requirement because, just  
 13 like all other Class members, it: (1) purchased or otherwise acquired STEC securities  
 14 during the Class Period; (2) purchased or otherwise acquired STEC securities at  
 15 prices artificially inflated as a result of the allegedly materially false and misleading  
 16 statements and/or omissions; and (3) suffered economic loss thereby when the price  
 17 of STEC common stock declined when the misrepresentations made to the market,  
 18 and/or the information alleged in the complaint to have been concealed from the  
 19 market, were revealed, removing the inflation from STEC's stock price. Therefore,  
 20 the Hester Family's claims are like the claims of each member of the class and "arise  
 21 from the same event or course of conduct that gives rise to the claims of other class  
 22 members." *Crossen*, 2005 U.S. Dist. LEXIS 41396, at \*13-14. The Hester Family is  
 23 not subject to any unique or special defenses. Thus, the Hester Family meets the  
 24 typicality requirement of Fed. R. Civ. P. Rule 23 because its claims are the same as  
 25 the claims of the other Class members

26 **b. The Hester Family Will Adequately Represent**  
 27 **the Class**

28 Under Rule 23(a)(4), the representative party must "fairly and adequately

1 protect the interests of the class.” The PSLRA directs the Court to limit its inquiry  
 2 regarding the adequacy of the Movant to whether the interests of the movant are  
 3 clearly aligned with the members of the putative Class and whether there is evidence  
 4 of any antagonism between the interests of the movant and other members of the  
 5 Class. 15 U.S.C. § 78u-4(a)(3)(B). *See also Miller v. Ventro Corp.*, No. C01-01287,  
 6 2001 U.S. Dist. LEXIS 26027, \*44 (N.D. Cal. Nov. 28, 2001) (citing *Takeda v.*  
 7 *Turbodyne Techs.*, 67 F. Supp. 2d 1129, 1132 (C.D. Cal. 1999)).

8 The Hester Family’s interests are clearly aligned with those of the other  
 9 members of the Class. Not only is there no evidence of antagonism between the  
 10 Hester Family and the other Class members, but Movant has a significant, compelling  
 11 interest in prosecuting these Actions to a successful conclusion based upon the very  
 12 large financial loss of approximately \$353,991 that the Hester Family has suffered as  
 13 a result of the wrongful conduct alleged in these Actions. This motivation, combined  
 14 with the Hester Family’s identical interests with the members of the Class,  
 15 demonstrates that Movant will vigorously pursue the interests of the Class. In  
 16 addition, the Hester Family has selected a law firm that is highly experienced in  
 17 prosecuting securities class actions to represent Movant and the Class.

#### 18 **4. The Hester Family Is a Related, Close-Knit Group**

19 The majority of courts acknowledge that the PSLRA expressly provides that  
 20 the lead plaintiff may be a “group of persons,” but many refuse to appoint a group  
 21 composed of members with no pre-litigation relationship formed for the purpose of  
 22 aggregating financial interest. *See, e.g., In re Gemstar - TV Guide Int’l, Inc. Sec.*  
 23 *Litig.*, 209 F.R.D. 447 (C.D. Cal., 2002). *See also Aronson v. McKesson HBOC, Inc.*,  
 24 79 F. Supp. 2d 1146, 1153-54 (N .D. Cal . 1999) (expressing a preference that a  
 25 group of movants be “a close-knit ‘group of persons.’”).

26 The Hester Family is a “close-knit group” whose members have a pre-litigation  
 27 relationship. It is comprised of a husband and wife, Cebron and Judy Hester, and  
 28 their grandson, Justin Black. All three reside in Stanley, NC. As such, the Hester

1 Family has a “pre-litigation relationship based on more than their losing investment”  
 2 and is well-positioned to provide vigorous and adequate class representation. *See In*  
 3 *re Waste Mgmt., Inc. Sec. Litig.*, 128 F. Supp. 2d 401, 413 (S.D. Tex. 2000) (stating  
 4 that a group must be “at maximum a small group with the largest financial interest in  
 5 the outcome of the litigation and a pre-litigation relationship based on more than their  
 6 losing investment.”).

7 In sum, because of the Hester Family’s common interests with the Class  
 8 members, its clear motivation and ability to vigorously pursue these Actions, and its  
 9 competent counsel, the Hester Family meets the adequacy requirement of Fed. R.  
 10 Civ. P. Rule 23.

### 11 **III. THE COURT SHOULD APPROVE THE HESTER FAMILY’S CHOICE** 12 **OF LEAD COUNSEL**

13 Movant’s choice of Lead Counsel satisfies the requirements of the PSLRA.  
 14 Pursuant to 15 U.S.C § 78u-4(a)(3)(B)(v), the Lead Plaintiff shall, subject to Court  
 15 approval, select and retain counsel to represent the Class. The Court should not  
 16 disturb the Lead Plaintiff’s choice of counsel unless it is necessary to “protect the  
 17 interests of the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa). *See also In re*  
 18 *Cavanaugh*, 306 F.3d 726. Movant has selected and retained Milberg to serve as  
 19 Lead Counsel for the Class. Milberg possesses extensive experience litigating  
 20 securities class actions and has successfully prosecuted numerous securities class  
 21 actions on behalf of injured investors. *See Westerman Decl. Ex. D* (firm résumé of  
 22 Milberg).

23 Milberg is ideally suited to serve as lead counsel in this litigation. Milberg has  
 24 extensive experience handling shareholder class actions and other complex litigation,  
 25 and claims of the type asserted in this action. Further, Milberg possesses vast  
 26 resources, in terms of both financial ability and expertise, and has committed to put  
 27 these resources to use for the benefit of stockholders like the Proposed Lead Plaintiff  
 28 here.

1 Milberg has served as Lead or Co-Lead Counsel in many high-profile class  
2 actions, recovering billions of dollars for investors and others harmed by corporate  
3 mismanagement, forcing a number of important corporate reforms. Milberg currently  
4 serves as Lead Counsel or as chair of plaintiffs' executive committees in many high-  
5 profile securities actions pending throughout the country. Milberg has been  
6 appointed as Lead or Co-Lead Counsel in landmark class actions, including *In re*  
7 *NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465 (S.D.N.Y. 1998), where  
8 plaintiffs' recovery was the largest ever in an antitrust case. Other cases in which  
9 Milberg was responsible for obtaining outstanding recoveries for investors include *In*  
10 *re Tyco International Ltd., Sec. Litig.*, MDL No. 02-1335-B (D.N.H. 2002) (\$3.2  
11 billion); *In re Nortel Networks Corp., Sec. Litig.*, No. 01-CV-1855 (S.D.N.Y.) (\$1.1  
12 billion); *In re Lucent Techs., Inc., Sec. Litig.*, No. 00-CV-621 (D.N.J.) (\$600 million  
13 settlement); *In re Raytheon Sec. Litig.*, 99-CV-12142 (E.D. Mass.) (\$460 million  
14 settlement); and *In re Sears, Roebuck & Co. Sec. Litig.*, No. 02-CV-7527 (N.D. Ill.)  
15 (\$215 million settlement).

#### 16 **IV. CONCLUSION**

17 For the reasons stated above, Movant satisfies the requirements of the PSLRA  
18 for appointment as the most adequate plaintiff in this action and should be appointed  
19 Lead Plaintiff pursuant to 15 U.S.C. § 78u-4(a)(3)(B). As the most adequate plaintiff,  
20 Movant respectfully requests that the Court: (1) consolidate the related actions; (2)  
21 appoint Movant as Lead Plaintiff pursuant to the PSLRA; (3) approve Movant's  
22 selection of Milberg as lead counsel in this action and in any subsequently filed  
23 and/or related cases; and (4) grant such other and further relief as the Court may  
24 deem just and proper.

1 DATED: January 5, 2010

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